

88-121

NO. _____

Supreme Court, U.S.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

LARRY D. BARNETTE, ALLIED
MANAGEMENT CORPORATION, JETS
VENTURE CAPITAL CORPORATION,

Petitioners,

v.

UNITED STATES OF AMERICA

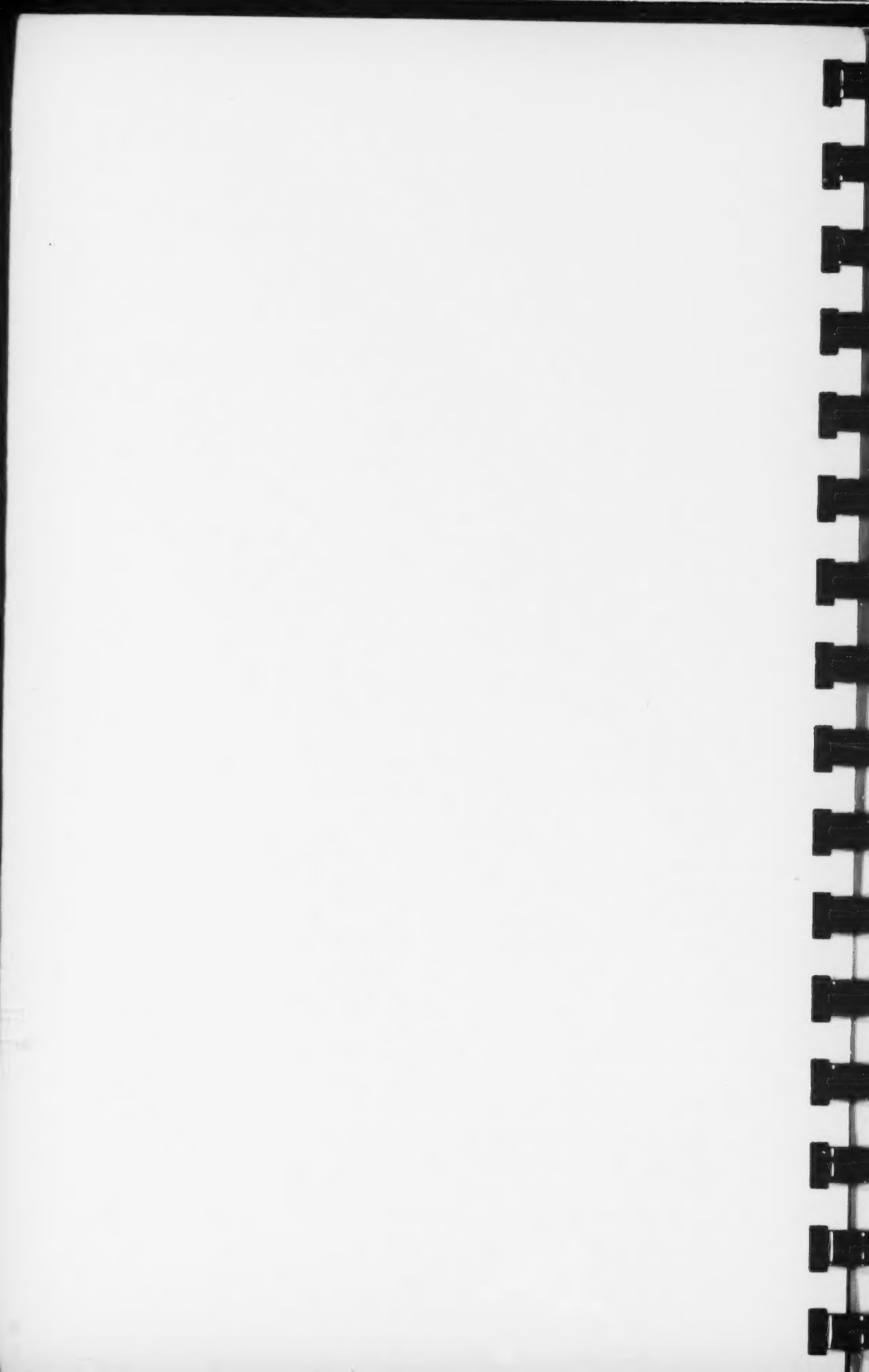
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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July 15, 1988



QUESTIONS PRESENTED

I. Whether the laws of the United States allow a United States District Court to enhance the criminal sentence of a defendant by ordering that interest earned on a defendant's supersedeas appeal bond, which was posted to guarantee the payment of court ordered restitution, must be paid to the United States.

II. Whether the double jeopardy clause of the Constitution of the United States allows a District Court to increase a sentence after the finality of a criminal appeal by awarding the United States interest that was earned on petitioner's appeal bond that was posted to secure the payment of court ordered restitution.

LIST OF PARTIES AND AFFILIATES
OF EACH CORPORATION

The parties to the proceedings below were the petitioners, Larry D. Barnette, Allied Management Corporation and Jets Venture Capital Corporation and the respondent, the United States of America.

Pursuant to Rule 28.1 subsidiaries of Allied Management Corporation are Jets Services, Inc. and J.E.T.S., Inc.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

LARRY D. BARNETTE, ALLIED
MANAGEMENT CORPORATION, JETS
VENTURE CAPITAL CORPORATION,

Petitioners,

v.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Petitioners, Larry D. Barnette,
Allied Management Corporation and Jets
Venture Capital Corporation respectfully
pray that a writ of certiorari issue to
review the judgment and opinion of the
United States Court of Appeals for the
Eleventh Circuit entered in the
above-entitled proceeding on May 5, 1988.

OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is Case Number 87-3183 dated May 5, 1988, reported at ____ F.2d ____, and is reprinted in Appendix A hereto, see infra page 1a. A timely petition for rehearing was denied on May 31, 1988, see infra page 10a.

JURISDICTION

Petitioners seek review of an order and opinion dated May 5, 1988, of the United States Court of Appeals for the Eleventh Circuit, see infra Appendix A, page 1a. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment V to the Constitution of the United States and pertinent provisions of law dealing with a district court's

authority to order restitution, 18 U.S.C. § 3651 and 18 U.S.C. § 3579 are set forth in Appendix B, see infra page 1b.

STATEMENT OF THE CASE

On August 30, 1983, an indictment was returned in the United States District Court for the Middle District of Florida charging petitioners, Larry D. Barnette (Barnette), Allied Management Corporation (Allied), Jets Venture Capital Corporation (JVCC), and other defendants with various charges primarily relating to government contract fraud. In July, 1984, petitioners were convicted of a majority of the counts and they were sentenced in November, 1984. Barnette was sentenced to serve five years imprisonment and to pay \$7,000,000.00 in restitution to the United States Army. The \$7,000,000.00 in restitution was to be paid by the end of his first year of imprisonment. The

restitution judgment and sentence contained no provision for the accrual or payment of interest. Allied was ordered to pay a fine of \$71,000.00 and JVCC was fined a total of \$2,000.00. These fines were to be paid within ninety days of the date of sentencing. Petitioners moved to stay the execution of their sentences pending appeal. On December 13, 1984, petitioners' motions for stay were granted. The stays were conditioned upon posting supersedeas bonds with the district court in an amount equal to the \$7,000,000.00 in restitution and in the amount of the two fines. On January 10, 1985, petitioners posted the required supersedeas bonds in the form of interest bearing certificates of deposit.

The direct criminal appeals of petitioners were duly prosecuted in the Eleventh Circuit Court of Appeals and on October 8, 1986, the Eleventh Circuit

affirmed the judgments and sentences of the district court with the exception of one count. United States v. Barnette, 800 F.2d 1558 (11th Cir. 1986), cert. denied, ____ U.S. ____, 107 S.Ct. 1578 (1987).

Barnette began serving the incarceration portion of his sentence on December 4, 1986. Pursuant to the court's original judgment and sentence, the due date for the payment of the \$7,000,000.00 in restitution would therefor be December 4, 1987. That is, one year after commencing the incarceration portion of Barnette's sentence.

On January 29, 1987, the United States filed a motion with the district court requesting that the supersedeas bond funds be disbursed to the United States including all interest that accrued on the certificates of deposit since they were deposited on January 5, 1985. On

March 11, 1987, the district court entered its order directing the clerk of the court to disburse the principal of the supersedeas bonds and all interest that had accrued on the bonds to the United States. The district court stayed that order pending an appeal to the Eleventh Circuit Court of Appeals.

On May 5, 1988, the Eleventh Circuit Court of Appeals determined that the district judge was in error in ordering all of the interest paid to the United States. The opinion of the Eleventh Circuit awarded interest accruing between January 10, 1985 and January 10, 1986, to petitioner Barnette. Interest accruing after that date, which is well in excess of \$1,000,000.00, was awarded to the United States. The Eleventh Circuit reasoned that Barnette, had he not appealed his original sentence and had commenced the incarceration portion of his

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sentence, would have been required to pay the court ordered restitution by January 10, 1986. This decision of the Eleventh Circuit authorizes the accrual and awarding of interest on a restitution judgment when there is no statutory authority for the imposition of this enhanced punishment on a criminal defendant.

On May 31, 1988, the Eleventh Circuit denied a timely motion for rehearing and on June 13, 1988 a stay was granted pending the filing of this petition. The funds involved are presently in the registry of the court.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AUTHORIZES THE DISTRICT COURT TO IMPOSE AN INTEREST PENALTY ON A RESTITUTION JUDGMENT WHEN THERE IS NO STATUTORY AUTHORITY FOR SUCH A RESULT.

Without congressional authorization, the Eleventh Circuit has authorized the District Court to exact a new penalty upon a defendant in a criminal case. That penalty is the awarding to the United States of interest that accrues on a supersedeas bond that was posted, pending appeal, to secure the payment of court ordered restitution. The Eleventh Circuit opinion ignores the time honored rulings of this court that the lower federal courts were created by the acts of congress and their powers and duties depend solely upon those acts of

congress. Gillis v. State of
California, 293 U.S. 62 (1934).
Jurisdiction of the federal courts is
clearly limited by Article 3 of the
Constitution and acts of congress. Owen
Equipment and Erection Company v. Kroger,
437 U.S. 365 (1978).

In the present case, there is no
question that the district court had
authority to order Barnette to pay the
\$7,000,000.00 in restitution. See 18
U.S.C. § 3651 and § 3579. The court also
had authority to require the posting of a
supersedeas bond to insure the payment of
that restitution. See Rule 38,
Fed.R.Crim.P. However, unlike civil
judgments, there is no statutory authority
for the awarding of interest on the
restitution judgment by way of an outright
pronouncement of sentence or by the
circuitous route of ordering interest that
accrued on a supersedeas bond to be paid

to the United States. Just as federal courts do not have the authority to create crimes nor to enlarge the reach of enacted crimes, the power to sentence a defendant and impose penalties springs solely from acts of the legislature. Morissette v. United States, 342 U.S. 246 (1951) and Affronti v. United States, 350 U.S. 79 (1955). Also, a defendant may not receive a greater sentence than one that has been authorized by the legislature. United States v. Difrancesco, 449 U.S. 117 (1980).

The action of the district court in ordering all of the interest to be paid to the United States, and the opinion of the Eleventh Circuit deciding that a majority of the interest should be paid to the United States, are actions of lower district courts that were made without any statutory authority. Under this court's supervisory authority over lower federal

courts, it should issue its writ of certiorari to review the decision of the Eleventh Circuit Court of Appeal. This supervisory authority was recently noted in Bank of Nova Scotia v. United States and Kilpatrick v. United States, case numbers 87-578 and 87-602, ____ U.S. ____ (June 22, 1988).

Research has located only one case in the history of federal cases that has ruled on the question of the awarding of interest on criminal judgments. The decision of the Eleventh Circuit Court of Appeals is in direct conflict with the decision of United States v. Jacob Schmidt Brewing Company, 254 F. 714 (D. N.D. 1918) which holds that there is no statutory authority for the accrual of interest on criminal fines. The decision of the Eleventh Circuit approves the awarding of interest on fines as well as restitution.

It is to be noted that after the conviction and sentence of the defendant, congress did pass new legislation that imposed interest on fines. See, 18 U.S.C. § 3565 and comments reprinted in 1984, U.S. Code Cong. & Ad. News, 5433, 5440. Therein, the legislative history of 18 U.S.C. § 3565 is stated that congress for the first time imposed interest on fines by the passage of that section. To date, congress has not seen fit to pass a law authorizing the accrual of interest on restitution judgments.

This court should not allow the Eleventh Circuit precedent to stand that a district court does not need statutory authority to award interest on a criminal judgment.

II.

THE ELEVENTH CIRCUIT'S OPINION
AUTHORIZES THE DISTRICT COURT TO
ENHANCE THE PENALTY EXACTED ON A
DEFENDANT MERELY BECAUSE HE

CHOSE TO APPEAL HIS UNDERLYING SENTENCE. THE DOUBLE JEOPARDY CLAUSE OF THE CONSTITUTION DOES NOT PERMIT THE IMPOSITION OF THIS ENHANCED PENALTY.

In its opinion, the Eleventh Circuit notes that a trial court cannot punish a defendant for pursuing a direct appeal from his conviction, citing North Carolina v. Pearce, 395 U.S. 711 (1969). The Eleventh Circuit also notes that a district court may not increase a sentence after an affirmance on appeal, citing Barnes v. United States, 223 F.2d 891 (5th Cir. 1955). After citing and giving lip service to that precedent, the Eleventh Circuit then grants the district court authority to enhance a penalty exacted on a criminal defendant after an affirmance of his appeal. Barnette submits that to allow the exacting from him of an additional penalty in excess of \$1,000,000.00, by awarding the government the majority of the interest that accrued

on his supersedeas bond, is a clear violation of the double jeopardy clause of the Constitution. U.S. Const. Amend. V.

When dealing with the double jeopardy clause, an analysis should be made of the substance of the action that was taken against a defendant and not the label that may be given to that action. United States v. Difrancesco, 449 U.S. 117 (1980). The substance of the action in the Barnette case is quite simple. In November, 1984, Barnette was sentenced to pay \$7,000,000.00 in restitution to be paid by the end of his first year of confinement. He duly appealed that sentence and lost his appeal. He began his sentence in December, 1986 and was thereby required to pay the restitution by December, 1987. However, because he lost his direct criminal appeal, the court in its order of March, 1987, directed the clerk to take the defendant's appeal

supersedeas bond of \$7,000,000.00 and pay it to the United States together with all interest that accrued on the posted bond. Although the Eleventh Circuit has corrected a portion of that error, the remaining interest penalty totalling in excess of \$1,000,000.00, clearly increases the sentence of the defendant in violation of the Constitution of the United States. It has long been established that once a prisoner commences service of his sentence the double jeopardy clause prevents the imposition of a greater sentence. United States v. Benz, 282 U.S. 304 (1931) and Ex Parte Lange, 18 Wall 163, 85 U.S. 163 (1874). This law is applicable to the question of monetary penalties and fines as well as the incarceration portion of any sentence. Jeffers v. United States, 432 U.S. 137 (1977).

Since the action of the Eleventh Circuit and the district court clearly

enhances the sentence of Barnette, this court should issue its writ to review the decision of the Eleventh Circuit.

CONCLUSION

For the reasons that the action of the district court, as authorized by the Eleventh Circuit Court of Appeals, was made without statutory authority and in violation of the double jeopardy clause of the Constitution of the United States, this court should grant this petition for writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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July 15, 1988

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-3183

D.C. Docket No. 83-131

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

LARRY D. BARNETTE, ALLIED
MANAGEMENT CORP., JETS VENTURE
CAPITAL CORP.,

Defendant-Appellant.

Appeal from the United States District Court
for the
Middle District of Florida

(May 5, 1988)

Before RONEY, Chief Judge, JOHNSON, Circuit Judge, and PECK*, Senior Circuit Judge.

PER CURIAM:

Cash bonds in the form of certificates of deposit were posted by defendants as a condition of a stay pending appeal of their criminal sentences, involving substantial fines and incarceration. This case decides whether the Government or the defendants are entitled to the interest which accrued until defendants' convictions were affirmed.

Defendants Larry D. Barnette, Allied Management Corporation and Jets Venture Capital Corporation, were tried, convicted and sentenced under an indictment which charged a range of crimes arising from defendants' fraudulent Government

*Honorable John W. Peck, Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

contracting practices. Barnette was sentenced to a total of five years incarceration and ordered to pay \$7,000,000 in restitution to the Government, and Allied and Jets Venture were fined \$71,000 and \$2,000 respectively. After the filing of motions for clarification and postponement, Barnette's surrender date was set on January 10, 1985, and the restitution ordered paid within the first year of Barnette's confinement. The corporate fines were to be paid within 90 days of the date of judgment.

Motions to stay execution of the sentences pending appeal were granted upon the condition that each defendant post a bond in the amount of the ordered restitution or fine. The stay order specifically provided that any interest accruing on deposited funds was to remain in the registry of the court. On January 10, 1985, the defendants posted cash bonds with

the clerk, in the form of one-year certificates of deposit.

When these certificates of deposit matured in January of 1986, defendants' appeal was still pending. Defendants therefore moved for renewal of the certificates and return of accrued interest. The district court ordered the clerk to renew the certificates, but deferred ruling on the interest question until resolution of the appeal.

On October 8, 1986, this Court upheld defendants' convictions and sentences, with the exception of one sentence on one count. United States v. Barnette, 800 F.2d 1558 (11th Cir. 1986), cert. denied, 107 S.Ct. 1578 (1987). On December 4, 1986, Barnette began serving the incarceration portion of his sentence. The Government moved for disbursement of the funds held by the clerk, and on March 11, 1987, over defendants' objections, the district court

ordered the cash bonds and all accrued interest be disbursed to the Government. This order was stayed, however, pending the instant appeal.

There are two basic principles which guide the review of the district court's order. First, pursuant to 18 U.S.C.A. § 3579, a trial court has broad authority to order restitution and determine when it is to be paid. This is consistent with the general principle that trial courts have wide discretion in setting criminal sentences. See Solem v. Helms, 463 U.S. 277, 290 (1983); United States v. Carson, 669 F.2d 216, 217 (5th Cir. Unit B 1982). A trial court also has discretionary authority to require a defendant to guarantee payment of a fine, by requiring the posting of a bond pending appeal, Fed. R. Crim. P. 38 (a)(3); United States v. Astling, 733 F.2d 1446, 1461 (11th Cir. 1984).

Second, a trial court cannot punish a defendant for pursuing a direct appeal from a conviction. See North Carolina v. Pearce, 395 U.S. 711, 738 (1969) ("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort."). Neither can a district court increase a sentence after an affirmance. Barnes v. United States, 223 F.2d 891 (5th Cir. 1955) (court may not condition an appeal bond upon the requirement that defendant pay the costs of prosecution if conviction is affirmed). The purpose of a bond is to secure the presence of the defendant or to prevent dissipation of the defendant's assets, not to enrich the Government or punish the defendant. United States v. Rose, 791 F.2d 1477 (11th Cir. 1986) (condition on bond that it would be retained by the clerk to pay any fine levied against the defendant at sentencing invalid

under Eighth Amendment and Bail Reform Act). See also United States v. Powell, 639 F.2d 224 (5th Cir. Unit A March 1981); United States v. Jones, 607 F.2d 687 (5th Cir. 1979).

A review of the facts under these principles reveals that part of the accrued interest on the bond should go to the defendants, and part to the Government. If Barnette had not pursued an appeal, his restitution payment, under the district court's order, would have been finally due until January 10, 1986, one year after he would have commenced his confinement had there been no appeal and stay. Since Barnette would have been able to keep the interest earned on \$7,000,000 during that year, disbursal of that year's interest to the Government would constitute an impermissible burden on Barnette's right to appeal. Awarding the Government interest accruing after January 10, 1986, however,

simply gives the Government what it would have had were there no appeal and had the money been paid when due. Such an order does not penalize Barnette for pursuing an appeal, and furthers the trial court's expressed intention that the appeal should not delay payment of the ordered restitution.

Barnette contends that the district court's sentencing order could be construed as requiring the restitution to be paid within a year following his release from confinement. Any ambiguity in that regard was clarified upon Barnette's motion for sentence modification when the district court held that "all sentences of restitution are to run concurrently and that the total amount of \$7 million is to be paid within the first year of confinement."

The fines imposed upon the corporate defendants were to be paid within ninety days of the date of judgment or by February 2, 1985. Based on the above rationale, the

corporate defendants are entitled to interest accruing on their bonds between January 10, 1985 and February 2, 1985, and the balance of the accrued interest should be paid to the Government.

This case is remanded to the district court for further proceedings consistent with this decision.

VACATED AND REMANDED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-3183

Filed
U.S. Court of Appeals
Eleventh Circuit
May 31, 1988
Miguel J. Cortez, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY D. BARNETTE, ALLIED
MANAGEMENT CORPORATION and
JETS VENTURE CAPITAL CORPORATION,

Defendants-Appellants.

Appeal from the United States
District Court for the
Middle District of Florida

ON PETITION FOR REHEARING AND
SUGGESTION OF REHEARING IN BANC

(Opinion May 5, 1988, 11 Cir., 198__,
____F.2d____).

(May 31, 1988)

Before RONEY and JOHNSON, Circuit Judges,
and PECK*, Senior District Judge.

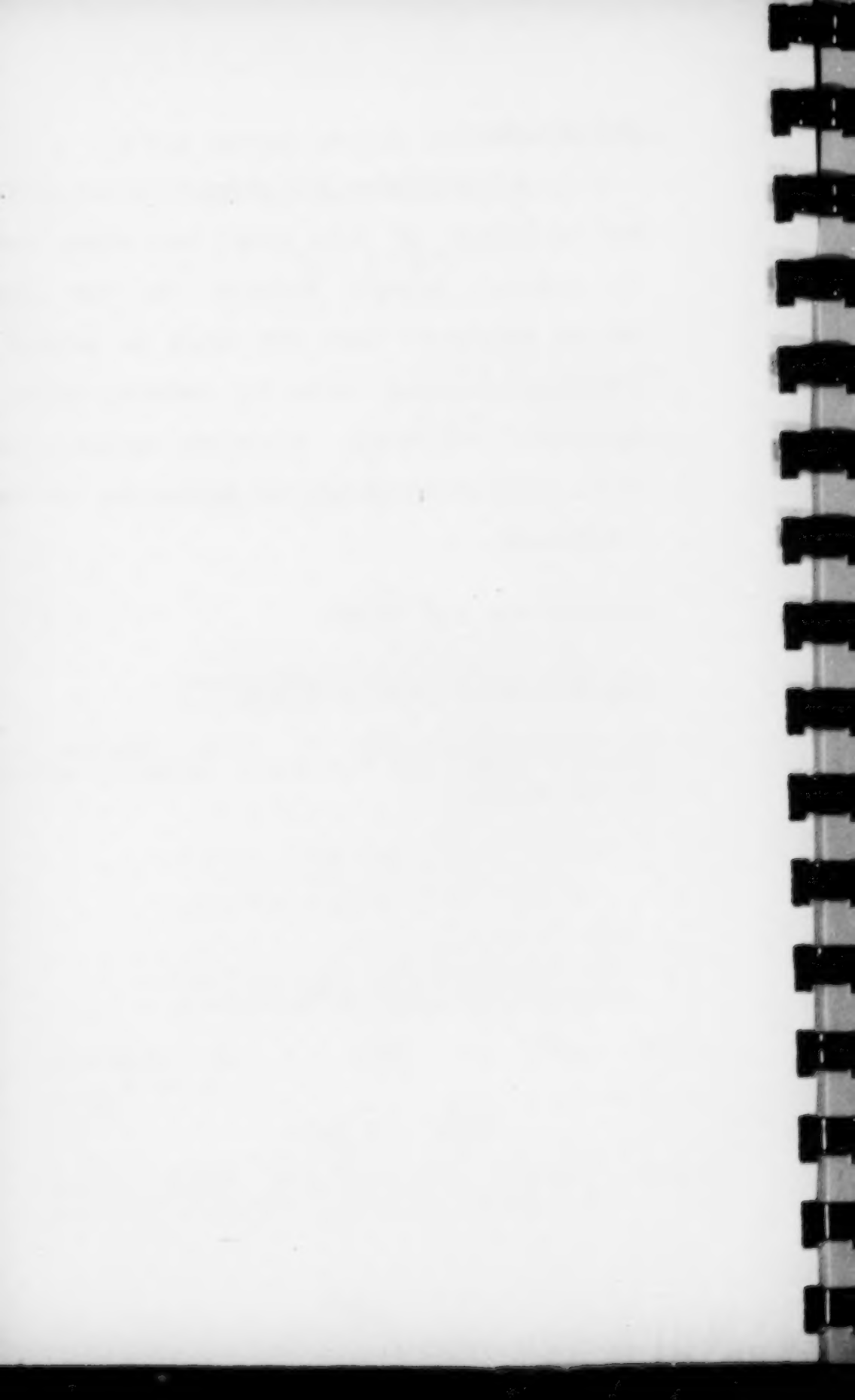
PER CURIAM:

(x) The Petition for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion of Rehearing In Banc are Denied.

ENTERED FOR THE COURT:

United States Circuit Judge

* Honorable John W. Peck, Senior U.S. Circuit Judge for the Sixth Circuit, sitting by designation.



APPENDIX B

§ 3651 Suspension of Sentence and Probation

Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, any court having jurisdiction to try offenses against the United States when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

Upon entering a judgment of conviction of any offense not punishable by death or life imprisonment, if the maximum punishment provided for such offense is more than six months, any court having jurisdiction to try offenses against the United States, when satisfied

that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution or a treatment institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the defendant placed on probation for such period and upon such terms and conditions as the court deems best.

Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

The court may revoke or modify any condition of probation, or may change the period of probation.

The period of probation, together with any extension thereof, shall not exceed five years.

While on probation and among the conditions thereof, the defendant -

May be required to pay a fine in one or several sums; and

May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and

May be required to provide for the support of any persons, for whose support he is legally responsible.

The court may require a person as conditions of probation to reside in or participate in the program of a residential community treatment center, or

both, for all or part of the period of probation: Provided, That the Attorney General certifies that adequate treatment facilities, personnel, and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because his such residence or participation adversely affects the rehabilitation of other residents or participants, he shall so notify the court, which shall thereupon, by order, make such other provision with respect to the person on probation as it deems appropriate.

A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.

The court may require a person who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of probation, to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of probation.

The defendant's liability for any punishment (other than a fine) imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation. If at the end of the period of probation, the defendant has not complied with a condition of probation, the court may nevertheless terminate proceedings against the defendant, but no such termination shall affect the defendant's obligation to pay a fine imposed or made a condition of

probation, and such fine shall be collected in the manner provided in section 3565 of this title.

§ 3579 Order of Restitution

(a)(1) The court, when sentencing a defendant convicted of an offense under this title or under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense.

(2) If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.

(b) The order may require that such defendant -

(1) in the case of an offense resulting in damage to or loss or

destruction of property of a victim of the offense -

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of -

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing, less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim-

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating

to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or

organization designated by the victim or the estate.

(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

(d) The court shall impose an order of restitution to the extent that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong the sentencing process.

(e)(1) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation. An order of restitution

shall require that all restitution to victims under such order be made before any restitution to any other person under such order is made.

(2) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in -

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of that State.

(f)(1) The court may require that such defendant make restitution under this section within a specified period or in specified installments.

(2) The end of such period or the last such installment shall not be later than -

(A) the end of the period of probation, if probation is ordered;

(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; and

(C) five years after the date of sentencing in any other case.

(3) If not otherwise provided by the court under this subsection, restitution shall be made immediately.

(4) The order of restitution shall require the defendant to make restitution directly to the victim or other person eligible under this section, or to deliver the amount or property due as restitution to the Attorney General for transfer to such victim or person.

(g) If such defendant is placed on probation or paroled under this title, any restitution ordered under this section shall be a condition of such probation or parole. The court may revoke probation and the Parole Commission may revoke parole if the defendant fails to comply

with such order. In determining whether to revoke probation or parole, the court or Parole Commission shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(h) An order of restitution may be enforced by United States or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action. /

CONSTITUTION OF THE UNITED STATES

AMENDMENT V

No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

